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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/429,581 04/27/95 MCGOVERN

E 940498

EXAMINER

SZKELY, P

15M1/0712

ART UNIT

PAPER NUMBER

#2

DAVID C BRUENING
700 KOPPERS BUILDING
436 SEVENTH AVENUE
PITTSBURGH PA 15219-1818

1511

DATE MAILED: 07/12/95

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS This application has been examined Responsive to communication filed on _____ This action is made final.A shortened statutory period for response to this action is set to expire 3 month(s), 0 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133**Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

1. Notice of References Cited by Examiner, PTO-892.
2. Notice of Draftsman's Patent Drawing Review, PTO-948.
3. Notice of Art Cited by Applicant, PTO-1449.
4. Notice of Informal Patent Application, PTO-152.
5. Information on How to Effect Drawing Changes, PTO-1474.
6. _____

Part II SUMMARY OF ACTION1. Claims 1-10 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. Claims _____ have been cancelled.3. Claims _____ are allowed.4. Claims 1-10 are rejected.5. Claims _____ are objected to.6. Claims _____ are subject to restriction or election requirement.7. This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.8. Formal drawings are required in response to this Office action.9. The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are acceptable; not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).10. The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been approved by the examiner; disapproved by the examiner (see explanation).11. The proposed drawing correction, filed _____, has been approved; disapproved (see explanation).12. Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has been received not been received been filed in parent application, serial no. _____; filed on _____.13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.14. Other**EXAMINER'S ACTION**

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15.

Claim 1 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The word derivative renders the claim indefinite. Carbon dioxide is a derivative of coal tar since it is one of the products ^{given} ~~give~~ off when coal tar is burned. R.S.
7/12/91

16.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

17.

Claims 1-10 are rejected under 35 U.S.C. § 103 as being unpatentable over McGovern 3,22615, McGovern 3,261,269 or McGovern 4,661,378 now Reexamination Certificate 4,661,378 in view of Walaschek 3,835,117, Walaschek 3,897,380, Yan 4,139,397, Koleas 5,180,428, Expandite Limited AU-210,541, Goodyear AU-211,004, *Mayarova* AG. SU-245,638, Kuraray KK JP-A-50-155,524, Toho Tennen Gas KK JP-A-52-19855 or Nymas NV EP-0,422,315.

18.

The patents by McGovern disclose applicant's invention although without the elastomer. The secondary references all show different elastomers being added to bituminous materials, especially to coal tar and its derivatives. Since the criticality of the concentrations of the different ingredients is not shown in the specification the use of any concentration is obvious. It would have been obvious to one having

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7/12/91

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ordinary skill in the art, at the time the invention was made, to add any of the elastomers of the secondary references to the compositions of the primary references in order to improve the low temperature flexibility of the coating.

19.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Szekely, whose telephone number is (703) 308-2460. The Examiner can normally be reached on Tuesday through Friday from 7:30 a.m. to 6:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Michl, can be reached on (703) 308-245. The fax number for this Group is (703) 305-5433.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2351.



Peter Szekely:cb
Patent Examiner

Tuesday, July 11, 1995

PETER A. SZEKELY
PRIMARY EXAMINER
GROUP 1500